A.F.R.

(194)

[redacted]

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO.1187 OF 2005

PETITIONERS

1. Salim Thobhani, aged about 36 years, S/o Shri Shahabuddin Thobhani, Partner, M/s Thobhani Automobiles, Manendragarh, R/o A/2 Farishta Apartments, Byron Bazar, Raipur, District Raipur (Chhattisgarh)
2. Manohar Lal Purohit, aged about 73 years, S/o Shri K.L.Purohit, Manager, M/s Thobhani Automobiles, Manendragarh, R/o Ward No.1, Civil Lines, Manendragarh, District Koriya (C.G.)
3. Sanjeev Kumar Purohit, aged about 25 years, S/o Shri M.L. Purohit, Assistant Manager, M/s Thobhani Automobiles, Manendragarh, R/o Ward No.1, Civil Lines, Manendragarh, District Koriya (C.G.)
4. S.N.Jha, aged about 63 years, S/o Shri Jha, Owner, M/s Balaji Road Carriers, Tarbahar, Bilaspur, Tahsil & District Bilaspur (C.G.)

versus

RESPONDENTS

1. State of Chhattisgarh, Through : Secretary, Department of Food, Civil Supplies & Consumer Protection, D.K.S. Building, Mantralaya, Raipur, Chhattisgarh
2. Collector (Food), District Koriya, Chhattisgarh
3. Food Inspector, Manendragarh, District Koriya (Chhattisgarh)

Present : Mr. Manindra Shrivastava, learned Senior Advocate with Mr. V.R.Tiwari, learned counsel for the petitioners.
Mr. Yashwant Singh, learned Government Advocate for the respondents/State.

ORAL ORDER
(Passed on 21st March, 2006)

(195)

This writ petition arises out of the proceedings initiated by the Collector (Food), District Koriya, the second respondent herein under the Chhattisgarh Kerosene Dealers Licensing Order, 1979 (for short 'Licensing Order') confiscating the tanker bearing registration No.CG-10A/4723 and 12 Kiloliters of kerosene found therein.

(2) The facts of the case in brief are as follows : The Food Inspector, Manendragarh submitted an enquiry report to the Collector, Koriya on 6-4-2004 after enquiring with the shop of M/s Thobhani Automobiles, Kerosene Wholesale Dealer, High School Road, Manendragarh on 23-8-2004. In the said report, it is stated that on 25-3-2004, the Depot Manager, Hindustan Petroleum Company, Bilaspur, issued 12 – 12 Kiloliters kerosene in two tankers, one bearing registration No.CG-10ZB/1013 for Koriya District and the other bearing registration No.CG-10A/4723 for Surguja District. Both those tankers, fully loaded, were found standing before the Firm Thobhani Automobiles, Manendragarh. Tanker No.CG-10A/4723, though belonged to Surguja District, was found in Koriya District. In the circumstance, the tanker No.CG-10A/4723 with 12 Kiloliters kerosene contained therein was seized on 28-3-2005 and the same was sent to the Police Station, Manendragarh on 30-3-2004 for its custody. The office of the District Collector, Food Branch, Koriya, in view of the letter dated 31-3-2004, written by the Depot Manager, Hindustan Petroleum Company, Bilaspur, called for tankerwise and datewise information from the petitioners regarding kerosene sent for Surguja and Koriya Districts till March, 2004. As per the information furnished by the Depot Manager of the petitioner – Firm, on 25-3-2004, 12

196

– 12 Kiloliters kerosene was issued in the tanker No.CG-10ZB/1013 for Koriya District and the tanker No.CG-10A/4723 for Surguja District. On the basis of the report of the Food Inspector and the information supplied by Manager of the petitioner – Firm, the second respondent issued show cause notice on 27-4-2004 to the petitioners under Section 6-B of the Essential Commodities Act, 1955 calling upon them to show cause as to why the tanker and the kerosene found therein should not be confiscated for violation of the control order on or before 5-5-2004. The owner of vehicle No.CG-10A/4723, namely, M/s Balaji Road Carriers, Tarbahar, Bilaspur was also issued show cause notice for violation of the provisions of the Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 (for short 'the Kerosene Control Order'). Petitioner No.1, namely, Salim Thobhani, petitioner No.2, Manohar Lal Purohit and petitioner No.4, S.N.Jha, owner of the vehicle submitted their written replies on 12-5-2004. Petitioner No.3, Sanjeev Kumar Purohit, however, did not submit reply to the show cause notice.

(3) In the replies submitted by petitioners No.1 and 2 to the show cause notice, it is stated that on 25-3-2004, vehicle No.CG-10A/4271 and vehicle No.CG-10A/4723 were filled-in with kerosene and were directed to be emptied at Surguja and Koriya. It is also stated that there is a proof to show that the tanker meant for Koriya, which was wrongly sent to Surguja, delivered the goods at Fair Price Shops in Surguja.

(4) The second respondent – Collector (Food), however, without referring to the specific plea of the petitioners No.1 and 2, as set out in

their replies to the show cause notice, but finding technical violation on the part of the petitioners in sending the tanker meant for Surguja to Koriya, passed the order confiscating the tanker bearing registration No.CG-10A/4723 and the kerosene contained therein and also forfeiting the security deposit furnished by the petitioners which was lying with the department, by his order dated 28-5-2004. By the same order, the dealership licence granted in the name of the petitioner No.1 was also cancelled.

(5) The petitioners, being aggrieved by the above order of the second respondent, preferred appeal No.F6.15/Khadya/04/29 to the State Government. The Government also summarily dismissed the appeal without considering the specific plea and explanation offered by the petitioners No.1 and 2 in their replies to the show cause notice issued by the Collector (Food), District Koriya. Hence, this writ petition by the aggrieved persons.

(6) I have heard learned counsel for the parties. Mr. Manindra Shrivastava, learned Senior Advocate for the petitioners, would submit that the impugned orders passed by the Collector (Food) and the Government could not be sustained in law, if not for any reason, but, for the reason that both the authorities have completely failed to refer to muchless consider the version/explanation of the petitioners No.1, 2 and 4, as set out in their replies to the show cause notice issued by the Collector (Food). Mr. Manindra Shrivastava, learned Senior Advocate for the petitioners, would highlight that there was absolutely no justification to resort to the drastic action of confiscation of the tanker and the goods found therein for a technical violation, particularly, when there is absolutely

(193)

no evidence to show that the petitioners diverted the goods in favour of someone for whom the goods was not intended, and on the other hand, according to Mr. Manindra Shrivastava, the materials placed before the authorities would show that the tanker meant for Koriya District, though diverted to go to Surguja District, the goods were promptly delivered to the fair price shops in Surguja. According to the learned Senior Advocate, looking from any angle, public justice did not suffer on account of diversion of the tankers and the goods transported in both the tankers have reached the intended beneficiaries.

(7) There is no need for me to pronounce upon the above version of the petitioners No.1, 2 and 4 and it is for the statutory authorities to appreciate the same. Suffice it to state that the Collector (Food) and the State Government are not justified in ignoring the above version of the petitioners No.1, 2 and 4, as set out in their replies to the show cause notice. I say this because, if that version, after necessary enquiry and verification, is found to be correct, it is trite, the violation on the part of the petitioners would be purely a technical violation and such violation would not entail the extreme drastic action of confiscation of the vehicle and the goods contained therein and forfeiting the security deposit. On the other hand, the version of the petitioners No.1, 2 and 4 in their replies, is not substantiated, it is for the statutory authorities to consider all other relevant and attendant facts and circumstances of the case and pass appropriate orders. I am of the considered opinion that both the Collector (Food) and the State Government did not deal with the matter in the way expected of them. Therefore, I think that the ends of justice would be met by directing the Collector (Food), District Koriya to dispose of the

proceedings *de novo* after taking into consideration all the facts and circumstances of the case, the documents produced by the petitioners and other material resting with them and after conducting further enquiry, if need be.

(8) In the result and for the foregoing reasons, I allow the writ petition and set aside the orders passed by the Collector (Food), District Koriya dated 28-5-2004 as well as the State Government dated 4-2-2005 and remand the proceedings to the Collector (Food), the second respondent herein with a direction to dispose of the proceedings *de novo* after giving reasonable opportunity to the petitioners to represent their case and after taking into account all the facts and circumstances of the case and the documents filed by the petitioners and in the light of this order as expeditiously as possible, at any rate within a period of four months from the date of receipt of a copy of this order. In the facts and circumstances of the case, the parties shall bear their respective costs in this writ petition.

Sd/-
Chief Justice

Gopal